



Board of Directors Special Meeting Agenda
Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)
Wednesday, June 2, 2021 | 9 a.m.
Via Zoom (Remote Meeting Per Governor Inslee's Proclamation 20-28)

To join the webinar by computer/web:

<https://zoom.us/j/93628200526?pwd=ZzJiSGdocVdwRGg2L3B6VTlFVjAvUT09>

Phone only dial:

1+253-215-8782

Meeting ID: 936 2820 0526

[No Participant ID – #]

Passcode if needed: 110366

**9 to raise hand to speak*

Public Meeting Agenda

- I. Call to Order
- II. Roll Call/Introductions
- III. Public Comment (limited to Special Meeting agenda topics)
- IV. Fort Worden Hospitality Update and Resolution 21-03 re Fort Worden Hospitality Concession Agreement
 - A. Staff Report
 - Fort Worden Hospitality Terms and Concession Agreement (*packet*)
 - B. Board Discussion

Action: Motion to approve Resolution 21-03 authorizing the Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented and to make non-substantive changes that do not materially alter the agreement presented to the Board on May 26, 2021, including changes in the form of agreement presented at the June 2, 2021 special meeting.
- V. Fort Worden Foundation Memorandum of Agreement (*packet*)
 - A. Staff Report
 - B. Board Discussion

Action: Motion to authorize the Executive Director to execute the Memorandum of Agreement with Fort Worden Foundation, Makers Square Master Tenant, LLC, Makers Square Landlord, LLC, and Makers Square Manager, LLC substantially in the form presented to the Board at a special meeting on June 2, 2021, and to make non-substantive changes that do not materially alter the Memorandum.
- VI. Next Regular Board Meeting: Wednesday, June 23rd, 9 a.m.
- VII. Adjourn

RESOLUTION NO. 21-03 *[proposed/6.2.21]*

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT WORDEN
LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY
AUTHORIZING AND DIRECTING THE INTERIM EXECUTIVE DIRECTOR TO
EXECUTE AN AGREEMENT WITH FORT WORDEN HOSPITALITY TO MANAGE
AND OPERATE HOSPITALITY SERVICES AND FACILITIES AT THE FORT
WORDEN CAMPUS**

RECITALS:

- A. This Resolution of the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority (Fort Worden Public Development Authority, or FWPDA) authorizes the Interim Executive Director to execute a concession agreement with Fort Worden Hospitality, a WA nonprofit corporation, to manage and operate hospitality services and facilities within the Fort Worden campus.
- B. The FWPDA's charter, adopted in September 2011, specifically directs the FWPDA to undertake, assist with, and facilitate the implementation of a Lifelong Learning Center at Fort Worden State Park consistent with the 2008 Fort Worden Long Range Plan, and to develop the necessary agreements and partnerships for the use, operation, management, and development of State-owned facilities and properties within the Park.
- C. The FWPDA's master lease with Washington State Parks establishes that the FWPDA, as tenant, shall use the campus for "purposes consistent with a Lifelong Learning Center" as articulated in Parks planning documents, and that "such uses may evolve and change over time while remaining focused on uses consistent with a Lifelong Learning Center concept." The lease further states that the tenant "shall promote the use of the Campus facilities for nonprofit, government and corporate events, meetings, workshops, seminars, and conferences even if such promotion and use is not the highest and best market use and may reduce the overall net revenues (due to discounted lease or conference rates); provided, however, Tenant shall also actively promote, market, and make available the facilities for independent travelers, family retreats, and other users."
- D. Beginning in the spring of 2020, COVID-19 and resulting emergency public health measures directed by the State caused the closure of hospitality and accommodation services at the Fort for approximately 4 months. Facing cash deficit conditions as a result of COVID-19 impacts on business and the use of capital monies for operations, the FWPDA's Interim Executive Director and Board of Directors began reviewing the long-term sustainability of the current operating model, which was not producing revenue sufficient to address capital and maintenance needs on campus.
- E. At the November 25, 2020 FWPDA board meeting, the Interim Executive Director presented a draft reorganization concept that included the creation of an entity that would operate as an enterprise service provider for all food/beverage/hospitality services under a long-term agreement with the FWPDA. The presentation proposed that structural changes would address challenges with the FWPDA's current role as a public entity

running a hospitality business. He stated that the current model is unsustainable with projected ongoing budget deficits.

- F. At the December 9, 2020 FWPDA board meeting, the Interim Executive Director presented the “FWPDA Recovery and Reorganization Plan” and recommended that the FWPDA reorganize to develop new opportunities to restore and acquire revenues to support expenditures and continue hospitality services. The presentation stated that for the continuity of campus services, the FWPDA needs to pivot to a new model to be prepared for the post-COVID environment. The plan built on the presentation at the Board’s November 25, 2020 meeting for the formation of a new entity to operate hospitality services under a long-term franchise agreement. The new entity would allow a board composed of hospitality experts to focus on hospitality, limit constraints on customary hospitality practices stemming from being operated by a government entity, separate routine maintenance needs from capital needs, and help create long-term sustainability for campus services.
- G. The Interim Executive Director advised at the meeting that the plan represents in his opinion the only way forward for the FWPDA to ensure long-term viability of hospitality operations and lifelong learning opportunities, and the viability of the Fort as a whole for the benefit of its partners, the community at large, and the state. Separating hospitality services from asset management services allows a hospitality entity to focus on hospitality services, and work with partners on those issues to the benefit of the partners and community, and better fulfill that portion of FWPDA responsibilities under the master lease. At the same time, the FWPDA can focus on asset management to more effectively find the constituents, tax benefits, and investment to enhance and rehabilitate those assets, and therefore be in a better position to fulfill that portion of FWPDA responsibilities under the master lease.
- H. On December 9, 2020, the FWPDA Board adopted Resolution 20-21 approving the reorganization concept outlined in the “FWPDA Recovery and Reorganization Plan,” subject to Board approval of implementing measures and actions presented in the future by the Interim Executive Director, and directing the Interim Executive Director to take initial steps to implement the reorganization as outlined in the plan.
- I. On December 16, 2020, the FWPDA Board, on recommendation of the Interim Executive Director and legal counsel, amended Resolution 20-21 to replace references to a “not-for-profit limited liability corporation (LLC)” with a “nonprofit corporation” as the best legal structure for the new hospitality service model, citing that Washington State RCWs offer more and better guidance for nonprofits.
- J. Authorized reorganization steps include 1) filing for the creation of a nonprofit corporation that, once formed and organized with a new board, would enter into negotiations with the FWPDA for a long-term agreement to operate hospitality services at the Fort, and 2) if appropriate, transferring on a short-term basis (not to exceed one year) hospitality services operations to the new nonprofit corporation, pending long-term agreements that would be subject to future Board approval.

- K. The Interim Executive Director filed articles of incorporation for Fort Worden Hospitality as a Washington Nonprofit Corporation with the Secretary of State, effective December 22, 2020, with the mission stated as: “Fort Worden Hospitality welcomes visitors to a treasured state asset -- Fort Worden State Park and Lifelong Learning Center. We connect people to the park's resources: the lifelong learning center campus; the cultural, educational, artistic, environmental, and recreational programs offered by the park's partner organizations; and the trails, beaches, and historic batteries. We also provide hospitality packages; meeting and event spaces; food services; and lifelong learning programming.”
- L. At the January 27, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented a 2021 budget outlook. The Interim Executive Director stated he would be working with FWPDA staff and an informal hospitality advisory team to review budget projections and operational issues. The outlook presented an overview of a Hospitality board with extensive hospitality and/or financial management experience, and anticipated operational changes and forecasting for leisure, group, and restaurant activity and proposed that Fort Worden Hospitality formally separate from the FWPDA on July 1, 2021.
- M. At the meeting, the Interim Executive Director stated he had reviewed the concept for a separate entity operating hospitality services with Gerry Johnson (Pacifica, Seattle), an attorney with expertise in public development authorities, who advises there was no legal issue with the concept.
- N. At the meeting, the Interim Executive Director also stated he had reviewed the concept and projections with representative of the State Auditor’s Office, and they had no audit or legal issues with the concept.
- O. At the February 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented for discussion 1) a draft concession contract term sheet that outlined hospitality services to be provided and 2) a Fort Worden Hospitality Business Plan for 2021-2022 that included a five-year pro forma. The board voted to authorize the board co-chairs and Interim Executive Director to negotiate the terms of a Hospitality Concession Contract and bring a formal proposal to the board in March.
- P. At the March 24, 2021 board meeting, the Interim Executive Director and FWPDA hospitality staff presented an updated draft term sheet and draft concessionaire agreement between the FWPDA and Fort Worden Hospitality to commence July 1, 2021 for 25 years. The draft agreement was modeled on a WA State Parks concession agreement template. The draft terms noted that Fort Worden Hospitality would fulfill all terms of public benefit in the FWPDA’s master lease with State Parks and provide public reports for operational transparency.
- Q. At the March 24 meeting, the Interim Executive Director reported to the board that the hospitality advisory team has been analyzing history, trends, and projections and has concluded that Fort Worden Hospitality’s business model is viable and sustainable.

- R. At the March 24, meeting FWPDA board member and treasurer Jeff Jackson, with extensive background in hospitality businesses, and who has been reviewing hospitality projections and providing advice to the Interim Executive Director, concurred with the Interim Executive Director’s recommended approach because it best meets the goals of sustainability in both hospitality and asset management areas.
- S. At the March 24, 2021 meeting, the FWPDA board authorized the Board Co-Chairs, Interim Executive Director, and FWPDA attorney to incorporate the draft terms as presented into a Fort Worden Hospitality concessionaire agreement and provide a final draft with a minimum 7-day public notice of a special board meeting to consider final adoption by the FWPDA board.
- T. At its April 28, 2021 meeting, the FWPDA board accepted the Fort Worden Hospitality draft concession documents as substantially consistent with the draft terms previous presented to the Board, and approved a first reading of the concession contract with final consideration and action to occur at a future meeting.
- U. The concession agreement does not affect Makers Square, which is separately managed by Makers Square Master Tenant, LLC (whose managing partner is the Fort Worden Foundation).
- V. At its May 26, 2021 meeting, the FWPDA board moved to approve Resolution 21-03, and then approved a motion to postpone final action until a special meeting on June 2, 2021 to allow for additional input and board consideration.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority:

The Board authorizes the Interim Executive Director to execute a Concession Agreement with Fort Worden Hospitality in substantially the form of agreement presented to the Board at its regular meeting on May 26, 2021, including changes in the form of agreement presented at the June 2, 2021 special meeting. The Interim Executive Director is authorized to make non-substantive changes that do not materially alter the agreement presented to the Board.

ADOPTED by the Board of Directors of the Fort Worden Lifelong Learning Center Public Development Authority at a special meeting thereof, held the 2nd day of June, 2021.

By: _____
Norm Tonina, Co-Chair

ATTEST:

By: _____
Jane Kilburn, Secretary

By: _____
Todd Hutton, Co-Chair

Note re Draft Concession Agreement:

The following copy shows comments from WA State Parks in red and FWPDA responses for discussion in blue.

**Fort Worden Lifelong Learning Center Public Development Authority
Fort Worden Hospitality
CONCESSION AGREEMENT (DRAFT)**

This CONCESSION AGREEMENT (“Agreement”), by and between the FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY (“FWPDA”) and FORT WORDEN HOSPITALITY (“Concessionaire”), grants non-exclusive (except where otherwise stated) concession rights on the Fort Worden State Park campus in Jefferson County, Washington, SUBJECT TO the terms and conditions contained in this Agreement, including exhibits to this Agreement, which are incorporated into and made a part of this Agreement by reference.

RECITALS

- A. Whereas, pursuant to the Master Lease dated August 2, 2013 by and between State of Washington, acting through the Washington State Parks and Recreation Commission, as Landlord and Fort Worden Lifelong Learning Center Public Development Authority, a Washington public authority chartered by the City of Port Townsend under authority of Washington law and City ordinance (the “FWPDA”), as tenant, FWPDA assumed primary responsibility for management of the Fort Worden campus and its 72 historic buildings and additional revitalized buildings;
- B. The State, as assignor, and FWPDA have entered into that certain Assignment and Assumption Agreement, dated as of July 16, 2014, as amended by letter agreement dated August 8, 2014, wherein the State has assigned, and the PDA has assumed, the right, title, and interest of the lessor in and under the 2013 Lease;
- C. On December 29, 2017, FWPDA as lessor and Makers Square Master Landlord, LLC (“Master Landlord, LLC”) as lessee entered into a lease of Buildings 305, 308 and 324 in connection with a transaction known as Makers Square to secure Historic Tax Credits (HTCs) for rehabilitation of these buildings. Separately, Master Landlord LLC leased the buildings to Master Tenant LLC, which in turn has or intends to lease the buildings to Fort Worden Foundation. In addition, FWPDA has leased or will lease the grounds in and around the buildings to Foundation to manage with the buildings as part of its lease of the buildings. This Agreement does not pertain to or affect those buildings or grounds known as Makers Square.
- D. The FWPDA enters into this Agreement to grant to Concessionaire certain rights to operate certain services within and at certain facilities as described in this Agreement and more particularly in Exhibit A (“Business”), within and at facilities shown on Exhibit B (“Concession Facilities”). The purpose of this Agreement is to provide enhanced and expanded visitor experiences with the Lifelong Learning Center.

DEFINITIONS

Contractor: A person or company that undertakes a contract and/or is under contractual

obligation to provide materials or labor to perform a service or do a job.

Concessionaire: A Contractor that the FWPDA has authorized to use/possess a structure or location under lease to FWPDA as lessee under the Master Lease with the State. Note: A Concessionaire is always a Contractor and for purposes of this agreement the terms may be used interchangeably.

1. TERM

1.1. Term. This Agreement shall commence on Date of Execution (date of last signature) and shall expire coterminous with and in accordance with Section 1.2 – Concessionaire’s Performance

1.2. Concessionaire Performance. This Concessionaire shall commence performance on July 1, 2021, or on the date signed by the FWPDA, whichever is later (“Commencement Date”), and expire on July 1, 2041, unless terminated earlier under another provision of this Agreement (the period from the Commencement Date to the date of expiration or termination is the “Agreement Term”) The parties agree Concessionaire is entitled to extend the Agreement for one five-year term on the same terms as conditions, so long as Concessionaire is current on all obligations under the Agreement. Concessionaire shall give notice in writing to FWPDA one year in advance of July 1, 2021 of its intent to extend the Agreement.

Commented [HP(1): We need to verify we have the authority to approve what essentially a 25-year term.

2. OPERATION

2.1. Concessionaire’s Operation of the Business. Concessionaire shall operate the Business as described in Exhibit A and shall perform all work, provide all labor, and provide all, equipment, furnishings, and supplies sufficient for the operation of the Business, except that equipment, furnishings, and supplies identified in Exhibit A as being provided by the FWPDA. At all times during the Agreement Term, Concessionaire shall use reasonable efforts in operating the Business. Nothing prevents Concessionaire from entering into such agreement or agreements as it deems appropriate to carry out the Business, PROVIDED, that Concessionaire ensures that any sub-concessionaire or service provider comply with all terms of this Agreement that apply to the operation of the Business, and that Concessionaire retains the right to terminate any sub-concessionaire or service provider agreement for failure to do so.

2.2. Additional Services. The FWPDA may, at its sole discretion, authorize Concessionaire to provide other directly related concession services, all subject to space availability and approval in writing by the FWPDA. Any such expansion of concession services shall be documented in an amendment to the description of the Business contained in Exhibit A.

Commented [HP(2): I believe State Parks would want to approve major additions to the scope of services requiring amendment to this agreement.

2.3. Qualifications of Concessionaire and Concession Personnel. Concessionaire and Concessionaire’s employees and agents shall be qualified to operate the Business, including, but not limited to, operating and maintaining any necessary equipment. Concessionaire and Concessionaire’s employees and agents shall perform in a

businesslike and courteous manner and strive to provide quality service to campus visitors. As required by state or local law, Concessionaire and employees must be in possession of all health or food and/or alcohol handling permits. If directed to do so by the FWPDA Executive Director, Concessionaire or Concessionaire's employees must at all times when on duty wear a name tag and clothing approved by the FWPDA in order to be recognized as an employee of Concessionaire and any limitations or disapprovals will be communicated to Concessionaire in writing which may include email.

2.4. Public Benefit and Mission. All terms of Public Benefit, as described in Section 3.2 of the FWPDA Master Lease with Parks, remain in place and Concessionaire agrees to fulfill those terms on behalf of the PDA. Public Benefits generally include, but are not limited to, the following: operation of the Campus as a Lifelong Learning Center open and accessible to the public; provision of services and programs consistent with such use; provision of facilities conducive to public enjoyment of the Campus as a Lifelong Learning Center; and provision of ancillary benefits to the Port Townsend community resulting from such operation of the Campus. The scope and nature of Public Benefits may change as the Lifelong Learning Center matures. A Public Benefits Report shall be included as a part of the Annual Report from the PDA to the Commission, and the Concessionaire agrees to full participation in the creation of that Annual Report.

While operating within this Agreement, the Concessionaire's mission statement must include reference to the Lifelong Learning Center and must conform at all times to the terms and conditions of the Master lease. If a conflict is found to exist with this agreement and the Master Lease the terms and conditions of the Master Lease will prevail over this agreement.

2.5. Background Checks. A criminal background check shall be performed on each and every person working on behalf of Concessionaire under this Agreement, including, but not limited to, each employee, agent, and volunteer of Concessionaire, and Concessionaire him- or herself (if a natural person), except that a person who neither interacts with campus visitors nor enters Park/campus lands is not subject to a background check. Background checks required under this section shall be performed at Concessionaire's expense or at the expense of the person subject to the background check. Background checks required under this section shall be completed prior to the person initially commencing work on behalf of Concessionaire and prior to resuming work on behalf of Concessionaire in each subsequent season, or a background check shall be performed at least annually for persons working year-round on behalf of Concessionaire. Concessionaire may not allow any person for whom a background check is required under this section to work on Concessionaire's behalf if the person's background check reveals information suggesting that the person poses a danger to the person or property of any campus visitor or campus staff or volunteers, or a danger to the FWPDA's property. At the FWPDA's request, Concessionaire shall provide the FWPDA with copies of any and all background checks conducted under this section.

2.6. Compliance with Laws, Rules, and Regulations. Concessionaire shall comply with all laws, ordinances, and rules relating to the use and occupancy of the Concession

Facilities and conduct of the Business. Concessionaire will not permit any objectionable action which would constitute a nuisance or commit any waste upon the Concession Facilities.

2.7. Permits and Licenses. Concessionaire shall obtain and keep in force all permits, licenses, permissions, consents, and approvals required by governmental agencies or third parties in connection with Concessionaire's operation of the Business and occupation of the Concession Facilities. Application for permits shall be at the sole risk, cost, and expense of Concessionaire. A copy of UBI licensing must be submitted to the FWPDA prior to commencing operation of the Business, and copies of all other permits shall be supplied to the FWPDA upon request. Concessionaire shall pay on a timely basis all taxes as may be lawfully imposed and will comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Agreement.

2.8. Watercraft Rental. If renting watercraft, Concessionaire shall provide Coast Guard approved personal flotation devices and a whistle to all watercraft rental customers and shall require in rental agreements, and in practice, their use by all persons in or on the watercraft as a condition of rental. The sale, rental, or provision of flotation devices not approved by the U.S. Coast Guard is prohibited. Rentals shall only be offered during daylight hours and must be returned by sundown. No rentals shall be taken out during inclement weather (such as high winds or chance of lightning).

2.9. Independent Contractor. Concessionaire operates the Business as an independent contractor of FWPDA. Operation of the Business is not in any way a partnership, agency, franchise, or joint venture between the FWPDA and Concessionaire. Except as expressly provided in this Agreement, neither party shall be bound, with respect to third parties, by any representation made by the other party. The FWPDA has no obligation with respect to Concessionaire's debts or other liabilities. Concessionaire has the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, and discharge its employees and contractors and Concessionaire has the sole and exclusive control over its labor and employee relations policies and its policies related to wages, hours, and working conditions of its employees and contractors. In performing under this Agreement, neither Concessionaire nor Concessionaire's employees or contractors are employees of the FWPDA.

3. FINANCIAL RECORD KEEPING AND REPORTING

3.1. Reporting and Cash Handling. Concessionaire shall [develop and submit to the FWPDA for approval a comprehensive finance policy. Concessionaire will](#) adhere to [written cash handling procedures](#) [and maintain a \\$1,000,000.00 crime and fidelity coverage insurance policy.](#) Such cash handling procedures shall be commercially reasonable given the nature of the Business and sufficient to ensure safe and accurate accounting of all monies received by Concessionaire through operation of the Business. [Concessionaire shall also include within its financial policy standards for compliance with SOC2 and PII insuring protection of private customer data.](#)

Commented [HP(3)]: Where are these? Can we add to Exhibits?

3.2. Credit and Debit Cards. Concessionaire's payment and record-keeping systems must be fully compliant with all Payment Card Industry Data Security Standards (PCI DSS) issued by the official Payment Card Industry Security Standards Council. Concessionaire acknowledges that it is responsible for the security of cardholder data that it possesses, or otherwise stores, processes, or transmits on behalf of the customer.

3.3. Financial Sustainability. A 120-day operating reserve is required and must be fully funded by year six of Concessionaire's operations. The Concessionaire must establish a Strategic Plan, updated yearly, in addition to their Annual Budget, that includes a Financial Sustainability element. The Concessionaire's Annual Budget must include provisions for funding and then maintaining the operating reserve. At such time as reserve funds may be needed they may only be accessed by vote of the Concessionaire's board for budgeted uses.

3.4. Review and Audit. Concessionaire shall maintain a true account of all receipts and disbursements and other commercially reasonable financial and accounting records related to operation of the Business. Concessionaire shall make available to a contracted independent auditor any and all financial and accounting records related to operation of the Business, including, but not limited to, individual transaction receipts, daily records of gross sales, annual financial statements (balance sheet and income statement), and Excise Tax Returns submitted to the Washington State Department of Revenue. In addition to full participation in the FWPDA's Annual Report on Public Benefit, Concessionaire agrees to the following reporting requirements and provisions for operational transparency: Reporting Annual Audit, due by May 1st of the following year; Twice yearly public meetings, one on future strategy and one on financial results; Quarterly Financial Reports (closed within 45 days); Any kind of pending default must be reported within 15 days; Disclosure of material adverse events/legal proceedings; Annual marketing and advertising plan submitted; Concessionaire will participate in the Operations Work Group as defined in the FWPDA Master Lease; Concessionaire may present to FWPDA board meetings as invited.

4. REQUIRED PAYMENTS

4.1. Concession Fee. Concessionaire agrees to pay a Concession fee in lieu of rent, set at 3.5% of gross operating income. Non-operating revenues will not be included in calculation of concession fee. Concession fees will be paid quarterly within 45 days of the close of the quarter, and fees will be reviewed and reconciled with the audited yearly financials.

4.2. Subcontracting Fees Apply. If the Concessionaire further contracts for services outlined in the Agreement, then the gross revenue shall be calculated to include sub-concessionaire's revenue as if Concessionaire performed the work, for purposes of calculating the concession fee.

4.3. Master Lease Revenue Sharing. Concessionaire acknowledges Section 7.9 of the FWPDA Master Lease with State Parks requires the FWPDA to share 3.5% of gross revenues with State Parks, including gross revenues earned by the concessionaire. Commencement of this obligation has been delayed by Commission action until May 1, 2023 but may be reinstated by the Commission depending on the financial performance of the FWPDA and Concessionaire. ~~that The FWPDA is currently negotiating with State Parks an amendment wishes to negotiate with State Parks to eliminate the this~~ obligation; however, the FWPDA and Concessionaire shall assume commencement of the revenue sharing obligation on May 1, 2023 in their respective operating budgets. ~~in Section 7.9 of the Master Lease that commences as of the 7th annual anniversary of the Date of Possession (as defined in the Master Lease). Pursuant to that negotiation, Prior to May 1, 2023 and~~ at such point as the Concessionaire generates income in excess of funding operations, operating reserves, improving product offerings, and improving operating spaces, then excess funds will be directed to a restricted account for campus maintenance and improvements outside of Concessionaire’s operating spaces, as directed by FWPDA.

Commented [HP(4): Lets use the date set by the Commission when it delayed the revenue sharing provision

4.4. Uses and Maintenance Fees for Common Areas and Campus Areas

Common areas and campus areas are defined as areas leased to FWPDA by State and under FWPDA’s control (unless exclusively leased to another entity.)

- a) Use of the Common Areas and Campus Areas shall be governed by FWPDA’s policies and applicable rules as may be amended from time to time.
- b) FWPDA shall at all times have exclusive control, ~~and management, and~~ maintenance of the Common Areas, ~~and~~ Campus Areas and grounds (subject to the terms of its Master Lease with State Parks) and no diminution thereof shall be deemed a constructive or actual eviction or entitle Concessionaire to compensation or a reduction or abatement of fees.
- c) Beginning in 2022, (a) Concessionaire may be charged an annual Common Area maintenance (“CAM”) fee and (b) an annual Campus Area maintenance fee (fees to be determined by FWPDA in consultation with Concessionaire, and existing tenants or subtenants based on historical operational and maintenance cost data provided by FWPDA) for the Fort Worden Campus area and projected operational and maintenance costs for the common areas. Concessionaire shall pay to FWPDA (or its designee), a Common Area maintenance fee which will be a pro rata share of operational and maintenance costs related to any shared elevator within the building where the leased premises are located, shared performance space, gallery space, restrooms, and other maintenance.
- d) FWPDA (or designee) reserves the right, in its sole determination, to require additional, future, common area user or maintenance fees (in addition to facility charges) for the maintenance, repair and upgrades to campus-wide facilities that serve Concessionaire and other tenants and users of the campus area. The common area user or maintenance fees would be based on fees or projected fees for the maintenance, repair and upgrades to campus-wide facilities that are related to Concessionaire’s use. For example, if FWPDA determined that parking areas that serve Concessionaire and other users needed maintenance (or

would need maintenance in the near future), user fees would be charged to cover Concessionaire's share of the costs based on Concessionaire's parking use.

- e) Operating costs are based on actual costs and normal maintenance and repair (but not capital projects as defined by Office of Financial Management of the State of Washington), including utilities, alarm response service, police, fire and EMT service contracts, janitorial, HVAC and elevator inspections, attributable to or incurred in connection with the operation of facilities.

4.5. Utilities and Other Expenses. During the term of this Agreement, Concessionaire shall pay all expenses incurred by Concessionaire in the use of the Concession Facilities and operation of the Business, including, but not limited to, all utility charges, including all charges for electricity, water, gas, telecommunications, and all costs of maintaining and repairing the Concession Facilities and all improvements thereon whether now existing or hereafter installed. Concessionaire is so obligated whether or not such expenses are billed to Concessionaire, to the FWPDA, or to any other party. Concessionaire shall indemnify, defend, and hold the FWPDA harmless against and from any loss, liability, or expense resulting from any failure of Concessionaire to pay all such charges when due. All service lines of such utilities shall be installed and connected to existing public utilities at no cost to the FWPDA.

4.6. Taxes and Assessments. Concessionaire shall pay all taxes and assessments and other governmental charges of any kind applicable or attributable to the operation of the Business or use and occupation of the Concession Facilities, including, without limitation, any leasehold tax payable to the FWPDA pursuant to RCW 82.29A.

4.7. Manner of Payment. All payments, including fee payments and payments for other sums owed, shall be made by check or money order payable to the FWPDA and mailed to the address listed in section 12.1 (Notices and Submittals), or to any other payee as directed by the FWPDA in writing, or mailed to any other address which the FWPDA, or any successors-in-interest to the FWPDA, may designate to Concessionaire in writing. Notwithstanding ~~that payments~~ those payments may be made by mail, payments shall in any event be received by the FWPDA on or before the date due as specified in this Agreement. Payments may also be made to the FWPDA by electronic funds transfer, per arrangement through the FWPDA's Financial Services Office.

4.8. Charges for Late Payments and NSF Checks. Notwithstanding the FWPDA's right to terminate this Agreement for nonpayment of fees, Concessionaire shall pay interest at the rate of one percent (1%) per month on delinquent sums owing under the terms of this Agreement, commencing with the date originally due. Payment of fees and other sums when due is required under this Agreement and this section does not constitute or imply the extension of credit by the FWPDA. There shall be a thirty-dollar (\$30.00) handling fee for any check returned by the bank as uncollectible for any reason. The parties agree that such charges represent a fair and reasonable estimate of costs incurred by the FWPDA by reason of late payments and uncollectible checks.

4.9. No Counterclaim, Setoff, or Abatement of Rent or Other Sums Owed. Rent, additional Rent, if any, and all other sums for which Concessionaire is obligated to pay the FWPDA under this Agreement shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, and the obligations and liabilities of Concessionaire shall in no way be released, discharged, or otherwise affected (except as expressly provided in this Agreement) by reason of:

- a) Any damage to or destruction of or any taking of the Concession Facilities or any part thereof;
- b) Any restriction of or prevention of or interference with any use of the Concession Facilities or any part thereof;
- c) Any title defect or encumbrance or any eviction from the Concession Facilities or any part thereof by title paramount or otherwise;
- d) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to the FWPDA, or any action taken with respect to this Agreement by any trustee or receiver of the FWPDA, or by any court, in any such proceeding;
- e) Any claim which Concessionaire has or might have against the FWPDA;
- f) Any failure on the part of the FWPDA to perform or comply with any of the terms of this Agreement or of any other agreement with Concessionaire; or
- g) Any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Concessionaire or acceptance by the FWPDA of full or partial Rent during the continuance of any such breach, shall constitute a waiver for any such breach or of any such term.

No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the respective rights of the FWPDA and Concessionaire with respect to any other then-existing or subsequent breach.

4.10. Failure to Pay. In the event Concessionaire fails to pay any expense or amount due under this Agreement, the FWPDA may, but shall not be obligated to, pay any such amount, and the amounts so paid shall immediately be due and payable by Concessionaire to the FWPDA and shall thereafter bear interest at the rate of 12% per annum.

4.11. Late Charge for Failure to Pay. In the event Concessionaire fails to make any payment due under this Agreement upon the date due, including, but not limited to, payment of Rent, the FWPDA shall be entitled to collect from Concessionaire a late charge equal to one percent (1%) of the amount of the delinquent payment.

4.12. Application of Payments. Payments made under this Agreement will be applied in the following order: (1) interest, (2) Rent, (3) leasehold tax (if any), and (4) other charges.

5. INDEMNITY AND INSURANCE

5.1. Indemnity. Concessionaire shall release, indemnify, defend (with counsel acceptable to the FWPDA), and hold harmless the FWPDA [and Washington State Parks and Recreation Commission](#), ~~their~~ employees, officers, and agents from and against any and all claims arising out of Concessionaire's operation of the Business and the use, occupation, or control of the Concession Facilities by Concessionaire, Concessionaire's sublessees, invitees, agents, employees, licensees, or permittees, or caused by the operation or failure to operate any equipment, improvements, or other property or fixtures on the Concession Facilities, except as may arise solely out of the willful and grossly negligent acts of the FWPDA or the FWPDA's officials, employees, or agents. "Claim" as used in this section means any claim of any nature whatsoever for penalties, financial loss, damages (including, but not limited to, bodily injury, sickness, disease, or death, or injury to or destruction of property, land, and other natural resources, including the loss of use thereof), costs or expenses (including, but not limited to, attorneys' fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the FWPDA, its officials, employees, or agents, except as provided in this section. To the extent that RCW 4.24.115 is applicable to any indemnification provision of this Agreement, the FWPDA and Concessionaire agree that provision shall not require Concessionaire to indemnify, defend, and hold the FWPDA harmless from the FWPDA's sole or concurrent negligence, if any. Concessionaire waives its immunity under RCW Title 51 to the extent it is required to indemnify the FWPDA. This subsection is in addition to and does not in any way limit or diminish Concessionaire's liability or indemnity obligations otherwise provided for in this Agreement. If a Concessionaire requires any person to execute a personal release of liability related to use of goods or services provided through the Business, Concessionaire shall include within the release an express release of the FWPDA in addition to any other persons or entities released.

5.2. Insurance. At all times during the Agreement Term, Concessionaire shall keep in full force insurance coverage, acceptable to the FWPDA, insuring Concessionaire and providing coverage as outlined in Exhibit C. [Any policy shall name both FWPDA and the Washington State Parks and Recreation Commission as additional insured.](#) A certificate evidencing such coverage referencing this Agreement shall be provided to the FWPDA [and Commission](#) at ~~their~~ address of record provided in this Agreement. All policies shall specify that any legal expenses incurred by any claim against the insured shall be covered over and above said liability limit, such that said liability limit represents a "net" liability limit. In the event insurance containing such specifications cannot be acquired, then Concessionaire shall purchase insurance with liability limits which are fifty percent (50%) higher than set forth above.

5.3. Cancellation. The Certificate(s) of Insurance must provide a minimum of 30 days' written notice to the FWPDA by the insurer before cancellation, non-renewal, or any material change of any insurance coverage included therein. No reduction in the amount of coverage shall be made without the prior written approval of the FWPDA.

5.4. Industrial Insurance Coverage. Concessionaire shall obtain and maintain at all times during the Agreement Term industrial insurance coverage as required by the Department of Labor & Industries for itself and its employees prior to commencing operation of the Business under this Agreement. The FWPDA will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Concessionaire, or any subcontractor or employee of Concessionaire, which might arise under the industrial insurance laws during Concessionaire's operation of the Business under this Agreement.

~~5.5. Fire Insurance. Unless expressly waived, Concessionaire shall obtain and maintain at all times during the Agreement Term insurance for fire and casualty. Such insurance shall be a fire legal liability policy in the amount of full replacement value or fifty thousand dollars (\$50,000), whichever is higher, naming the FWPDA as the beneficiary. The amount of insurance required may hereafter be increased or decreased at the option of the FWPDA. All policies shall carry a minimum 30 days' notification of cancellation clause.~~

~~5.6-5.5.~~ **Other Insurance.** In addition to that insurance specifically required by this Agreement, Concessionaire shall obtain and maintain at all times during the Agreement Term such other insurance as is typically or customarily maintained for the Business.

~~5.7-5.6.~~ **Evidence of Insurance.** Concessionaire must furnish evidence of all insurance required under this Agreement in the form of a Certificate of Insurance satisfactory to the FWPDA (such as ISO form CG 00 01 or equivalent), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, and shall be sent marked "Concession Program" to the FWPDA's address shown herein.

~~5.8-5.7.~~ **Independent Contractors.** Concessionaire shall require any independent contractors, if any, to obtain and maintain the same insurance coverage required of Concessionaire, at all times such independent contractor is performing work at the Concession Facilities on behalf of Concessionaire during the Agreement Term.

6. FACILITIES

6.1. Use of Facilities. The FWPDA authorizes Concessionaire to use the Concession Facilities as described in Exhibit B for purposes of operation of the Business. The Concession Facilities shall be used only for the operation of the Business as authorized in this Agreement. Other commercial or non-commercial activities, or use and occupancy by other parties of the Concession Facilities not directly related to Concessionaire's operation of the Business are prohibited unless approved in advance and in writing by the FWPDA.

6.2. Condition of Concession Facilities. Concessionaire accepts the Concession Facilities in its present condition, after renovation work by the FWPDA and removal of trade fixtures and other personal property of the FWPDA's predecessor concessionaire, if any, as set forth in Exhibit B. The condition of the Concession Facilities shall be verified by

the Concessionaire's inspection of the Concession Facilities prior to the commencement of this Agreement.

- 6.3. Access to Concession Facilities.** Concessionaire shall have access to the Concession Facilities as necessary to operate the Business over established Park/campus roads and driveways. Concessionaire may park vehicles and equipment only in those areas designated by FWPDA. Concessionaire's access rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of the Park/campus or business conducted other concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between the FWPDA and a third party. FWPDA cannot and does not guarantee access in the event of an emergency or other factor beyond FWPDA's control, including, for example, infrastructure failure for which FWPDA does not in its determination have budget to address.
- 6.4. Parking.** Concessionaire shall have non-exclusive use of parking areas managed by FWPDA. Concessionaire does not have exclusive parking areas unless the same are specifically identified in Exhibit B (Facilities).
- 6.5. Management.** Concessionaire shall manage and maintain the Concession Facilities and all improvements thereon in accordance with the customary standards of the industry.
- 6.6. Maintenance and Repair.** Concessionaire shall perform all minor maintenance and repairs to keep the Concession Facilities in a safe, inviting, sanitary, and usable condition. Minor maintenance and repairs shall include, but is not limited to, routine maintenance; cleaning; removal of debris, litter, and obstructions; painting the inside of buildings; replacing light bulbs; and performing other minor interior maintenance, including minor electrical and plumbing repairs. Concessionaire shall immediately notify the FWPDA Executive Director in writing of any ~~major~~-maintenance or repair needs in the Concession Facilities that exceeds minor maintenance. ~~Major~~ ~~m~~Maintenance and repair necessitated by the failure of Concessionaire to perform minor maintenance and repair shall be the responsibility of Concessionaire.
- 6.7. No Obligation to Maintain or Repair Concessionaire's leased premises.** Neither FWPDA nor its designees are obligated to maintain or make any repairs, additions, or improvements or replace any items or defects, in or to the leased premises including any building or infrastructures serving the leased premises, which are provided in "As-Is" condition. FWPDA is not in a financial position to warranty the condition of the premises and repair defects. Therefore, it is incumbent on Concessionaire to inspect the premises under Concessionaire's control (including, during the course of any construction, if applicable, relating to the premises where such construction is occurring, and bring any construction issues to the attention of the project manager). It is also incumbent on Concessionaire to review its needs for a reserve fund to manage the condition of the premises and future repairs and maintenance. FWPDA and Concessionaire agree and acknowledge that FWPDA has only outdated facilities assessments for some buildings which it manages which may not include the building of which the premises is a part.

6.8. Damage. Concessionaire shall, at its own expense, repair to the FWPDA's satisfaction any damage to the FWPDA's property resulting from actions or omissions by Concessionaire or its agents or employees, beyond normal wear and tear.

6.9. Signs and Advertisements. All signs ~~of Concessionaire, whether affixed to the Concession Facilities, or placed upon or adjacent to the Concession Facilities, or~~ used in any manner by Concessionaire, must fit-conform with Master Lease requirement and require approved by State Parks into the aesthetics of the Park/campus and agency sign policy.

6.10. Sanitation. Concessionaire is responsible for the cleanliness of the Concession Facilities, including all equipment, appliances, storage areas, and grounds used by Concessionaire. Concessionaire is responsible for removal and disposal of all garbage and refuse generated in the operation of the Business and shall participate in the FWPDA's recycling programs. As may be specified in Exhibit A, Concessionaire is responsible for disposal of all garbage and refuse in the area adjacent to the Concession Facilities as designated by the FWPDA Executive Director. If serving food is part of the Business, Concessionaire shall use recyclable food and beverage containers as practicable. Concessionaire shall promptly provide to the FWPDA Executive Director a copy of any and all health department inspection reports conducted by or on behalf of any governmental authority.

6.11. Hazardous Substances Prohibited. Except as expressly allowed in writing by the FWPDA in Exhibit A as essential to the operation of the Business, Concessionaire shall not bring or keep in, on, or about the Concession Facilities, any hazardous substances. For purposes of this Agreement, hazardous substances include any that have been designated as hazardous, toxic, dangerous, or harmful, or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state, or local law, regulation, statute, or ordinance. Concessionaire is liable for all cleanup costs and damages associated with the use, disposal, transportation, or generation of hazardous substances by Concessionaire or its employees, agents, assigns, contractors, subcontractors, licensees, or invitees. This provision shall survive the expiration or termination of the Agreement.

6.12. Personal Property. The FWPDA is not be liable in any manner for or on account of any loss of damage sustained to any property in or about the Concession Facilities, except for such claims or losses which may be caused by the FWPDA or its authorized agents or employees.

6.13. Condition at End of Agreement Term. Concessionaire shall, at its sole expense, clean and repair the Concession Facilities and restore it to the condition it was in upon delivery of the Concession Facilities to Concessionaire at the Commencement Date, reasonable wear and tear excepted.

6.14. Non-Applicability of Relocation Assistance. Concessionaire acknowledges that this Agreement does not at any time entitle Concessionaire to assistance under the Uniform Relocation and Real Property Acquisition Policy (RCW 8.26).

7. CONCESSIONAIRE EQUIPMENT, FURNISHINGS, AND SUPPLIES

7.1. Equipment, Furnishings, and Supplies. As set forth in Exhibit A, Concessionaire shall, at its own expense, provide all equipment, furnishings, and supplies necessary for operating the Business beyond any equipment, furnishings, or supplies provided by the FWPDA at its sole discretion. The FWPDA shall have no responsibility to provide any equipment, furnishings, or supplies, except as identified in Exhibit A. Concessionaire accepts any equipment, furnishings, or supplies provided by the FWPDA in its present condition, as-is-where-is. Concessionaire may attach or fasten (such as by screwing, nailing, welding, gluing, etc.) equipment in or on the Concession Facilities without the prior written approval of the FWPDA provided that premises are returned to FWPDA at end of term in same condition as at start of agreement, less reasonable wear and tear.

7.2. Maintenance Equipment, Furnishings, and Supplies. Concessionaire shall, at its own expense, maintain, in good working order and in a safe and sanitary condition, all equipment, furnishings, and supplies necessary for operating the Business, including that equipment provided by the FWPDA (if any). The FWPDA shall have no responsibility to maintain any equipment, furnishings, or supplies or for the loss or damage to Concessionaire's equipment, furnishings, or supplies. To mitigate the potential for damage or loss through theft or malicious mischief, Concessionaire shall store equipment and supplies as provided in Exhibit A when not in use.

7.3. Equipment Replacement. Concessionaire shall maintain that equipment provided by the FWPDA (if any) in good working order and shall, at its own expense, replace any equipment provided by the FWPDA that is not in good working order or that may otherwise pose a hazard. Concessionaire shall maintain any Concessionaire-owned equipment and shall replace, at its own expense, any of its own equipment that is not in good working order or that may otherwise pose a hazard. Equipment purchased by Concessionaire, including equipment purchased by Concessionaire to replace equipment provided by the FWPDA, shall remain the property of Concessionaire. Except as expressly agreed to in writing by the FWPDA, the cost of equipment replacement or repair shall in no way reduce or offset fees or other payments due to the FWPDA under this Agreement.

7.4. Ownership of Equipment and Supplies at Agreement Expiration or Termination. Any personal property owned by Concessionaire used in the conduct of business by Concessionaire and placed by Concessionaire in or on the Concession Facilities shall not become part of the real property, even if attached or fastened to the Concession Facilities. Such personal property may be removed by Concessionaire at any time during the term of this Agreement, or within 30 days of the expiration or termination of this Agreement, provided Concessionaire is not in default under this Agreement, and provided any damage to the Concession Facilities occasioned by such removal is

immediately repaired to the satisfaction of the FWPDA. All other fixtures, equipment, and improvements constructed or installed in or upon the Concession Facilities shall be deemed to become part of the real property and, upon completion, shall become the sole and exclusive property of the FWPDA, free of any and all claims of Concessionaire or any person or entity claiming by or through Concessionaire. In the event Concessionaire does not remove its personal property from the Concession Facilities within 30 days of the expiration or termination of this Agreement, the FWPDA may at its sole election:

- a) Require Concessionaire to remove such property at Concessionaire's sole expense, and Concessionaire shall be liable for any damage to the Concession Facilities;
- b) Treat said personal property as abandoned, retaining the property as part of the Concession Facilities; or
- c) Have the personal property removed and stored or disposed of at Concessionaire's sole expense.

Concessionaire shall promptly reimburse the FWPDA for damage caused to the Concession Facilities by the removal of any of Concessionaire's personal property from the Concession Facilities, whether removal is by Concessionaire or the FWPDA.

8. IMPROVEMENTS

8.1. Authorized Improvements. Concessionaire may, at no cost to the FWPDA and with the FWPDA's [and State Parks](#) prior approval, make improvements, including additions and modifications to Concession Facilities provided by the FWPDA to enable provision of the services as set forth in the Agreement. Any alteration must conform to Master Lease Requirements [and require approval by State Parks](#). In making any improvements, Concessionaire shall obtain all licenses and permits, and comply with all applicable codes, regulations, and statutes. Concessionaire shall supply such plans, drawings, and specifications as needed by the FWPDA to evaluate the acceptability of any improvements prior to commencing work. The FWPDA may condition, limit, or deny approval of proposed improvements at its sole discretion, which approval shall be provided only in writing. Improvements become the property of the FWPDA upon completion unless otherwise agreed upon by the FWPDA in writing in advance.

8.2. Development Plan. Prior to any development or the construction of any and all improvements on or to the Concession Facilities, Concessionaire may be required to submit a complete development plan to the FWPDA for its written approval. The plan shall include, but is not limited to, the following:

- a) Map showing areas to be developed, location of improvements, and location of utility and other easements;
- b) Land clearing, leveling, and erosion control plans;
- c) List of proposed improvements and detailed plans for the improvements;
- d) Estimated itemized cost of proposed improvements; and
- e) Schedule of completion dates for proposed improvements.

Any alteration must conform to Master Lease Requirements. After completion of construction, Concessionaire shall provide to the FWPDA “as-built” drawings showing the exact location of all improvements. In case of incomplete improvements or development, Concessionaire shall restore the land to its original condition unless otherwise directed in writing by the FWPDA.

8.3. Unauthorized Improvements. Any improvements not included in the original or amended development plan as approved by the FWPDA, or as provided for by Letters of Authorization issued by the FWPDA, made on or to the site, without the written consent of the FWPDA, shall immediately become the property of the FWPDA or at the FWPDA’ option, must be removed by Concessionaire at Concessionaire’s sole cost. Said removal shall occur within 30 days unless sooner required by FWPDA Executive Director for reasons of safety.

8.4. Concessionaire Liens. Concessionaire must not suffer or permit any lien to be filed against the FWPDA’s interest in the Concession Facilities, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by, or through Concessionaire. Concessionaire agrees to pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Concession Facilities. Concessionaire must indemnify the FWPDA for any costs, damages, or expenses (including attorneys’ fees and court costs) incurred in defending any liens or in obtaining their discharge or as a result of such other asserted claims against the right, title, and interest of the FWPDA in the Concession Facilities or under the terms of this Agreement, whether such costs, damages, or expenses were incurred prior or subsequent to expiration or termination or cancellation of this Agreement.

9. RESERVATIONS BY THE FWPDA

9.1. The FWPDA’s Reserved Rights. The FWPDA reserves the right to merchandise, through vending machines or other means, at any location within the Park, other than the Concession Facilities, certain items including, but not limited to, snacks, beverages, and educational, recreational, and interpretive materials, as well as official FWPDA memorabilia. The FWPDA further reserves the right to grant privileges on occasion to certain non-profit groups to sell materials and provide food and beverage for fund-raising purposes.

9.2. Compliance. The FWPDA shall have access to the Concession Facilities at all times to secure compliance with this Agreement.

9.3. Park Closure. Concessionaire acknowledges that the Park may be closed, or access to the Park may be limited, from time-to-time. Concessionaire hereby waives any claim against the FWPDA for any losses suffered or allegedly suffered due to change of fees, park-operating periods or conditions, or closure of the Park for any reason.

9.4. Easements. The FWPDA reserves the right to grant easements, permits, and other rights (“Easements”) over and across the Concession Facilities and the right for Easement holders to enter upon the Concession Facilities to maintain, repair, and enhance existing facilities and install new facilities. Such rights shall be exercised in such a manner so as to minimize any disruption to Concessionaire.

9.5. The FWPDA Modification/Improvement of the Park or Concession Facilities. The FWPDA may at any time, at its discretion and expense, make improvements to, or repairs, maintenance, and/or modifications of the Park or the Concession Facilities. Concessionaire hereby waives any claim against the FWPDA for any loss of income suffered or allegedly suffered by Concessionaire from the FWPDA’s improvement to, or repairs, maintenance, and/or modifications of the Concession Facilities.

10. ASSIGNMENT

10.1. Assignment/Transfer. The rights granted under this Agreement may not be transferred to any other person or entity by act of Concessionaire, operation of law, or other means without the expressed prior written approval of the FWPDA at its sole discretion. Assignment or transfer may require Washington State Parks approval under its Master Lease with the FWPDA. Concessionaire shall not mortgage, assign, encumber, transfer, sublease, or otherwise alienate this Agreement without the prior written approval of the FWPDA. Concessionaire shall not grant any interest therein or engage in any other transaction that has the effect of transferring or affecting the right of enjoyment of the Concession Facilities without the prior written approval of the FWPDA, at its sole discretion. Notwithstanding the forgoing, nothing prevents Concessionaire from entering into such agreement or agreements as it deems appropriate to carry out the Business without prior approval by FWPDA, PROVIDED, that Concessionaire ensures that any sub-concessionaire or service provider comply with all terms of this Agreement that apply to the operation of the Business, and that Concessionaire retains the right to terminate any sub-concessionaire or service provider agreement for failure to do.

10.2. Non-Waiver. Consent of the FWPDA to an assignment will not waive its right to approve or deny subsequent assignments. The acceptance by the FWPDA of payment or performance following an assignment shall not constitute consent to any other assignment, and the FWPDA’s consent shall be evidenced only in writing.

10.3. Assignee Obligations. Each permitted assignee of Concessionaire shall assume and be deemed to have assumed all obligations of Concessionaire under this Agreement. Notwithstanding any such assignment, Concessionaire shall be and remain jointly and severally liable with the assignee for all obligations under this Agreement, unless released in writing by the FWPDA. Concessionaire’s obligations shall continue in full force and effect as to include any additional obligations created by any renewal, amendment, modification, extension, or assignment of the Agreement, whether or not Concessionaire shall have received notice of or consented to the same. Concessionaire waives all surety defenses and waives notice of any breach by a subsequent assignee.

10.4. Corporations, Limited Liability Corporations, General Partnerships, Limited Partnerships.

If Concessionaire is a corporation, any merger, consolidation, liquidation, or any change in ownership, control, or the power to vote the majority of its outstanding voting stock, shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a limited liability company, the death, withdrawal, or expulsion of a member or members owning, or transfer of interests representing, in the aggregate, more than fifty percent (50%) of the company profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer of interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment.

11. TERMINATION

11.1. Breach and Default. In the event of any breach of any provision of this Agreement by Concessionaire, the breach shall be deemed a default entitling the FWPDA to the remedies set forth in this Agreement or otherwise available at law after the FWPDA has delivered to Concessionaire notice of the alleged breach and a demand that the breach be remedied as required by this Agreement (“Breach Notice”). If the breach pertains to a matter other than the payment of Rent, Concessionaire shall not be in default after receipt the Breach Notice if Concessionaire promptly commences to cure the breach and cures the breach within 30 days after receipt of the Breach Notice. If the breach pertains to the payment of Rent, Concessionaire shall not be in default after receipt of the Breach Notice if Concessionaire cures the breach by paying all outstanding Rent to the FWPDA within 15 days after receipt of the Breach Notice. If the breach is non-monetary in nature, and as determined by the FWPDA, is not reasonably susceptible of being cured within 30 days from the date the Breach Notice (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), Concessionaire shall commence to cure such breach within the 30-day period and diligently pursue cure with continuity to completion. If a breach has been cured within the grace periods permitted by this section, it shall not constitute a default. In the event the FWPDA deems the breach to constitute a threat to safety, life, or property, it may elect to intervene immediately, without notice, to remedy the breach, and Concessionaire hereby agrees to repay the FWPDA for any and all costs in remedying the breach upon demand, together with interest thereon from the date of expenditure at the rate set forth in this Agreement. Alternatively, the FWPDA may require Concessionaire to act immediately to remedy the breach should the FWPDA deem it a threat to safety, life, or property.

11.2. Multiple Default. If Concessionaire breaches any provision of this Agreement three times within any 12-month period, whether the same provision or not, the third breach will be deemed “non-curable” and a default entitling the FWPDA to the remedies set forth in this Agreement or otherwise available at law.

11.3. Remedies. Upon the occurrence of any default, the FWPDA shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- a) Terminate this Agreement, in which event Concessionaire must immediately surrender the Concession Facilities to the FWPDA, and if Concessionaire fails so to do, the FWPDA may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Concession Facilities and expel or remove Concessionaire and any other person who may be occupying the Concession Facilities or any part thereof, without being liable for prosecution or any claim of damages therefore, and Concessionaire agrees to pay the FWPDA on demand the amount of all loss and damage which the FWPDA may suffer by reason of such termination, whether through inability to re-lease the Concession Facilities on satisfactory terms or otherwise.
- b) Enter upon the Concession Facilities, without being liable for prosecution or any claim for damages therefore and do whatever Concessionaire is obligated to do under this Agreement; and Concessionaire agrees to reimburse the FWPDA on demand for any expenses the FWPDA incurs in performing Concessionaire's obligations under this Agreement.
- c) Obtain damages from Concessionaire, including, but not limited to: all rentals lost, all legal expenses, and other related costs incurred by the FWPDA in restoring the Concession Facilities to good order and condition, or in remodeling, renovating, or otherwise preparing the Concession Facilities for re-leasing, all costs (including, but not limited to, any brokerage commissions and the value of the FWPDA's time) incurred by the FWPDA, plus interest thereon from the date of expenditure until fully repaid at the rate of 12% per annum.

Pursuit of any of the foregoing remedies will not preclude immediate pursuit of any of the other remedies under this Agreement or any other remedies provided by law, such remedies being cumulative and non-exclusive. No waiver by the FWPDA of any violation or breach of any of the terms, provisions, and covenants of this Agreement will be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Agreement. If, on account of any breach or default by Concessionaire in Concessionaire's obligations under the terms and conditions of this Agreement, it becomes necessary or appropriate for the FWPDA to employ or consult with an attorney concerning or to enforce or defend any of the FWPDA's rights or remedies hereunder, Concessionaire agrees to pay any reasonable attorneys' fees so incurred.

11.4. The FWPDA's Entry. In the event of any default by Concessionaire, the FWPDA shall have the right, with or without canceling this Agreement, to secure and/or enter the Concession Facilities and to remove all persons and property from the Concession Facilities and take whatever actions may be necessary or advisable to re-lease, protect, or preserve the Concession Facilities. Any property so removed may be stored in a public

warehouse or other suitable place or otherwise disposed of in the FWPDA's discretion at the expense and for the account of Concessionaire. The FWPDA shall not be responsible for any damages or losses suffered by Concessionaire as a result of such the FWPDA entry, removal, storage, or other disposition, and no such action shall be construed as an election to terminate this Agreement unless a written notice of termination is given to Concessionaire.

11.5. Termination of Agreements. Whether or not the FWPDA elects to terminate this Agreement based on any default by Concessionaire and subject to any non-disturbance and attornment agreements, if any, the FWPDA shall have a right to terminate any and all subleases, licenses, concessions, or other arrangements for possession affecting the Concession Facilities. Alternatively, the FWPDA, in its sole discretion, may succeed to Concessionaire's interest in such sublease, license, concession, or arrangement, and Concessionaire shall have no further right to or interest in the lease or other consideration receivable thereunder.

11.6. Termination Due to Exchange, Transfer, or Sale. Either the FWPDA or Concessionaire may terminate this Agreement upon 90 days' written notice in the event the FWPDA includes the Concession Facilities in a land exchange, transfer, and sale or if the Park is closed due to budgetary conditions.

11.7. Vacation of Premises. Concessionaire must give written notice to the FWPDA at least 90 days prior to vacating the Concession Facilities and must arrange to meet with the FWPDA for a joint inspection of the Concession Facilities prior to vacating. Failure to inspect or enforce compliance with Concessionaire's obligations under this Agreement with respect to the condition of the Concession Facilities at the end of the Agreement term will not be construed as a waiver of the FWPDA's right to declare a breach, or relieve Concessionaire of any liability to the FWPDA for any breach of the terms, conditions, or requirements of this Agreement. In the event Concessionaire fails to vacate the Concession Facilities on the date of expiration or termination of this Agreement, Concessionaire will be liable for any and all costs to the FWPDA arising from such failure.

12. MISCELLANEOUS

12.1. Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as provided in this section.

To FWPDA:
Fort Worden PDA
Building 200
200 Battery Way
Port Townsend, WA 98368

To Concessionaire:
Fort Worden Hospitality
Building [XXX]
200 Battery Way
Port Townsend, WA 98368

Changes of address may be given in accordance with this section. Any notice or submittal given under this Lease shall be:

12.2. Entire Agreement. This Agreement, including the attached Exhibits, is the entire agreement of the parties and no other agreement, statement, or promise made by any party, or by any employee, officer, or agent of any party, will be binding or valid.

12.3. Modification. The parties agree to a modification period of 12 months from the date the agreement takes effect. Modifications may be made by mutual written agreement of the parties, executed by party agents and reported to boards monthly, and are expected as a regular course of business during the modification period. The modification period will conclude with a set of changes voted for adoption by the boards of the parties. Following the modification period, modifications must be filed as addendums to the agreement and require individual votes. Except where this Agreement expressly provides that specific provisions of this Agreement may be modified by the FWPDA, this Agreement may not be modified except by mutual written agreement of the parties. [Washington State Parks and Recreation Commission at its sole discretion reserves the right to review any modifications prior to adoption by the parties. Notice shall be provided to the Commission at least thirty days \(30\) for review and comment before any modification to this agreement is executed. If the Commission does not respond within the thirty days then the parties may assume there is no objection to the proposed modification.](#)

12.4. Venue. Venue for any litigation arising out of this Agreement will be brought in the Superior Court of Jefferson County, Washington. Any litigation wrongly filed in any other county shall be transferred by court order to the Superior Court of Jefferson County with the plaintiff to pay all related attorneys' fees and court costs.

12.5. Governance. This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a) Applicable state and federal statutes and rules;
- b) The Special Terms and Conditions;
- c) The General Terms and Conditions;
- d) Any other provisions of this Agreement, including materials incorporated herein by reference.

12.6. Severability. If any provision of this Agreement shall be deemed void or otherwise invalid for any reason, the remainder of the Agreement shall be interpreted in a manner as to be effective and valid to the fullest extent possible. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

12.7. Interpretation. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and will be given a fair and reasonable interpretation in

accordance with the words of the Agreement, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

12.8. Disputes. Whenever Concessionaire and a successor, or Concessionaire and the FWPDA, cannot agree, the matter at issue shall be submitted to arbitration and such arbitration shall be binding. Each party to the dispute will appoint one arbitrator who together will choose a third arbitrator. The arbitration shall be governed by the State Arbitration Act, contained in RCW 7.04.

12.9. Attorneys' Fees. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, paralegal fees, accountant, and other expert witness fees, and all other fees, costs, and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

DRAFT

CONCESSIONAIRE

By: _____ Date _____

FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT AUTHORITY

By: _____ Date _____
David Timmons, Executive Director

APPROVED AS TO FORM ONLY:

Fort Worden Hospitality
Rodger Kohn, Legal Counsel

Fort Worden Lifelong Learning Center Public Development Authority
John Watts, Legal Counsel

ATTACHMENTS:

- Exhibit A Description of Business
- Exhibit B Description of Concession Facilities and Equipment, Furnishings, and Supplies
- Exhibit C Insurance

Exhibit A: Description of Business

1. Description.

As referenced in Section 4.1 of the Master Lease, the PDA shall promote the use of the Campus facilities for nonprofit, government and corporate events, meetings, workshops, seminars, and conferences even if such promotion and use is not the highest and best market use and may reduce the overall net revenues (due to discounted lease or conference rates); provided, however, PDA shall also actively promote, market, and make available the facilities for independent travelers, family retreats, and other users. The Concessionaire shall be responsible for these same duties on behalf of the PDA.

- a. Section 7.1 of the Master Lease sets forth a list of operational duties required of the PDA, some of which will be performed by the Concessionaire on the PDA's behalf. The services to be provided by Concessionaire shall include, but not be limited to, the following services at Fort Worden:
 - i. (Master Lease Section 7.1.1) Overseeing daily management and operation of the conference meeting facilities, accommodations, and hospitality services within the Campus;
 - ii. Accommodation sales and management for housing units;
 - iii. Group rental coordination for dorm buildings;
 - iv. Venue sales and management for indoor and outdoor venues, including audio visual equipment rental and services which may be subcontracted;
 - v. (Master Lease Section 7.1.2) Marketing the Center to fulfill the purposes of the Lifelong Learning Center;
 - vi. Manage branding, marketing and online presence for all hospitality offerings; work in cooperation for co-marketing opportunities across the Fort Worden Lifelong Learning Center where applicable; develop product enhancements in line with business needs;
 - vii. Develop and sell sponsorships, partnerships or marketing opportunities for products, services and events;
 - viii. (Master Least Section 7.1.3) Keeping the Campus in good, safe, and clean working order by providing the Maintenance described in other parts of the agreement;
 - ix. Provide building and equipment maintenance, janitorial and sanitation, garbage and grounds maintenance within service area;
 - x. (Master Least Section 7.1.4) Providing customer service to visitors of the Campus, such as food services, housing, meeting rooms, technology needs, and any other hospitality provisions necessary for their health, safety, and comfort;
 - xi. Operate three existing plus any future outlets food and beverage outlets in accordance with industry standard health regulations;
 - xii. Operate event catering as the exclusive caterer for campus, retaining right of refusal and right to recommend outside caterers and/or develop a preferred vendor list for catering;
 - xiii. Support the campus Lifelong Learning Center mission in the vendor services that support campus partner organizations;

- xiv. Provide event management services for private and public events, including vendor coordination;
 - xv. Manage guest on-site experience and wayfinding in conjunction with partner agencies; and
 - xvi. (Master Lease Section 7.1.8) Keeping the Campus open for general public access and use as a Lifelong Learning Center, three hundred and sixty-five (365) days per year, except for emergency closures.
- b. Concessionaire will develop educational programs in service of hospitality workforce needs for Fort Worden Hospitality Corp. and the broader community.
2. **Season and Hours of Operation of Business.** The period of operation of the Business shall be from January through December of each year during the Agreement Term. The Business is open seven days a week, hours vary seasonably.
3. **Equipment, Furnishings, and Supplies.** Equipment, furnishings, and supplies, as purchased for use in carrying out business that will now be performed by Concessionaire, are conveyed for use in same activities. See Attached.
4. **Marketing, Advertising, and Signage.** Concessionaire enjoys use of all marketing and advertising assets, including the domain www.fortworden.org, for the duration of this contract. All temporary signage assets are conveyed to Concessionaire for use, and future signage used by Concessionaire must meet site signage requirements of FWPDA. Permanent signage requirements have not changed and will continue to be administered by Washington State Parks via the FWPDA.
5. **Pricing List (attached).** On each subsequent anniversary of this contract, the Business shall submit an updated price list to the FWPDA Executive Director. The FWPDA has no responsibility over or approval of pricing.
6. **Point of Contact.**
Executive Director or Designee
7. **Grounds Maintenance.** Grounds Maintenance equipment remains the property of the FWPDA. Concessionaire will operate equipment and maintain grounds on behalf of the FWPDA until such time as those duties are taken back by the FWPDA, with a minimum 30-days' notice prior to such change of duties.
8. **Utilities.** Utilities will be maintained by the FWPDA, and Concessionaire will pay their portion as billed monthly by FWPDA.

Exhibit B: Facilities

1. Description of Facilities

Bldg No.	Gross Sq. Ft.	Date Built	Historical Use	Current Use	FWH Use	NOTES
4	10,314	1904	Double Officer's Quarters	Vacation Housing	10314	
5	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
6	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
7	5907	1904	Double Officer's Quarters	Vacation Housing	5907	
9	6464	1905	Double Officer's Quarters	Vacation Housing	6464	
10	6464	1905	Double Officer's Quarters	Vacation Housing	6464	
11	10,314	1905	Double Officer's Quarters	Vacation Housing	10314	
15	5979	1905	Double Officer's Quarters	Vacation Housing	5979	
16	14,719	1915	Bachelor Officer's Quarters	Vacation Housing	14719	
24	3286	1941	Regimental Chapel	Event Venue	3286	
25	4918	1932	Theater	Theater	4918	
26	19,035	1921/91	Balloon Hangar	Event Venue	19035	
200	10,688	1908	Post Headquarters	PDA Offices, Park Offices, FFW Gift Shop	TBD	Server & record access
203	19,344	1904	Company Barracks	Dormitory	19344	
204	19,344	1905	Company Barracks	Event Venue	19344	
221	1040	1941	Company Storehouse and Administration	Laundry, Housekeeping Office	1040	
225	39,200	1908	2 Company Barracks	Dormitory	39200	
229	1454	c 1890	Alexander's Castle	Vacation Housing	1454	
245	1030	1898	NCO Quarters	Vacation Housing	1030	
246	4100	1941	Regimental Recreation Hall	JFK Event Venue	4100	
262	1040	1917	NCO Quarters	Vacation Housing	1040	
270	1665	1904	Hospital Stewards Quarters	Vacation Housing	1665	
272	4780	1941	4 Family Officer's Quarters	Vacation Housing	4780	
277	4780	1941	4 Family Officer's	Vacation Housing	4780	

			Quarters			
296	2821	1941	Regimental Storehouse	Lawn Mower Shop	2821	
298	20,608	1904/1910	Post Hospital	PDA Offices, Goddard, Event Venue	TBD	Exclude Goddard-leased spaces
300	3668	1904	Guard House	Taps at the Guardhouse Bar & Restaurant (PDA)	3668	
304	9240	1941	Storehouse	Storage/Wood Shop	TBD	Potential changes in works
309	210	1920	Post Exchange Gas Station	Unoccupied		TBD
325	1216	1905	Double NCO Quarters	ADA Vacation Housing	1216	
326	5395	1941	Service Club (USO)	Conf./Event Venue	5395	
331	4505	1909	Double NCO Quarters	Vacation Housing	4505	
332	4505	1905	Double NCO Quarters	Vacation Housing	4505	
333	4505	1904	Double NCO Quarters	Vacation Housing	4505	
334	4505	1904	Double NCO Quarters	Vacation Housing	4505	
335	4505	1909	Double NCO Quarters	Vacation Housing	4505	
336	2101	1909	Fireman's Quarters	Vacation Housing	2101	
352	4505	1915	Double NCO Quarters	Vacation Housing	4505	
353	4505	1915	Double NCO Quarters	Vacation Housing	4505	
372	7872	1910	Wagon Shed & Quarters	PDA Storage	7872	
501	2000	1910	Cable Storehouse	Cablehouse Canteen	2000	
210	19,679	2003	None	Fort Worden Commons	19679	
235	861	1917	NCO Quarters	Vacation Housing (Bliss Vista)	861	
297	972	1960	None	Seminar - Event Venue	972	
364	662	1917	Motor Pool Carpenter Shop	Grounds	662	
604	36	UNK	None	Ticket Booth	36	



2. Site Access

Site access that has been granted to the FWPDA is hereby conferred also to the Concessionaire, subordinate to all provisions of the Master Lease.

3. Fixtures

Fixtures are included for the use of Concessionaire in the course of business. Fixture repair and replacement will be the responsibility of Concessionaire except by mutual agreement.

Exhibit C: Insurance

1. **INSURANCE.** Concessionaire shall, at its sole cost and expense, maintain in full force and effect the following minimum limits of insurance against claims for injuries to persons or damage to property which may arise from or in connection with Concessionaire's operations and adhere to terms and conditions of its liability insurance during the term of this Lease Agreement. Concessionaire shall maintain:
 - a) Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00 combined single limit for each occurrence, with a general aggregate limit of not less than \$2,000,000. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability, if applicable. General liability insurance may be written on an occurrence form at least as broad as ISO CG 00 01.
 - b) Workers Compensation Insurance as will protect Concessionaire's employees from claims under Washington Workers Compensation Act and as will secure Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
 - c) Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned (if Concessionaire owns vehicles), leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.
 - d) Property insurance against all risk of loss to any tenant improvements or betterments and tenant's personal property at full replacement cost with no coinsurance penalty provision.
 - e) Other Insurance Provisions.
 - i. **Additional Insureds.** All such insurance shall name "WASHINGTON STATE PARKS and Recreation Commission and the "FORT WORDEN PUBLIC DEVELOPMENT AUTHORITY," its officers, directors, employees, and volunteers as additional insureds, and shall be with insurance companies acceptable to the FWPDA. The Concessionaire agrees to supply the FWPDA with appropriate evidence to establish that its insurance obligations have been met, and that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice to the FWPDA.
 - ii. **Verification of Coverage.** Concessionaire shall furnish to the FWPDA for verification of coverage, Certificates of Insurance, including all amendatory endorsements at least as broad as ISO GC 20-24, and a copy of the Declarations Endorsements page to Concessionaire's General Comprehensive Liability policy, the conditions set forth in subparagraphs A, B, C, D, and E of Section XIII shall be met prior to occupancy.

- iii. **Primary Coverage.** Concessionaire's insurance coverage shall be primary insurance as respects the FWPDA and shall be at least as broad as ISO CG 20 01 04 13. And insurance, self-insurance, or insurance pool coverage maintained by the FWPDA shall be excess of the Concessionaire's insurance and shall not contribute to it. Concessionaire is solely responsible to insure its personal property or property of its guests, customers, or students against loss or casualty of any kind, and the FWPDA has no responsibility for the loss or damage to equipment and property of Concessionaire or its users.
 - iv. **ISO Amendments.** All references to ISO include any amendments thereto, and if the document is replaced, then the replacement document(s) applies.
 - v. **No Limitation.** Concessionaire's maintenance of insurance as required by this Lease Agreement shall not be construed to limit the liability of Concessionaire to the coverage provided by such insurance, or otherwise limit the FWPDA's recourse to any remedy available at law or equity.
 - vi. **Self-Insured Retention.** Self-insured retention must be declared and approved in writing by the FWPDA.
 - vii. **Special Risks or Circumstances.** The FWPDA reserves the right to modify these requirements at any time, including limits, based on the FWPDA'S assessment of nature of risk, prior experience, insurer, coverage, or other special circumstances.
 - viii. **Waiver of Subrogation.** Concessionaire hereby releases the FWPDA from liability and waives all right of recovery against the FWPDA for any loss from perils insured against under its insurance contracts, including any extended coverage endorsements thereto. Notwithstanding the foregoing, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Concessionaire's.
2. **INCREASE IN COST OF INSURANCE:** Concessionaire shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the FWPDA, the full amount of any resulting increase in premiums paid by the FWPDA with respect to the buildings or structures of which the premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of facility charge specified and shall be paid by Concessionaire to the FWPDA upon the rental due date or monthly facility charge day, as applicable, next thereafter occurring.

Memorandum of Agreement - **DRAFT**

PARTIES:

1. Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)
2. Fort Worden Foundation (Foundation)
3. Makers Square Master Landlord, LLC (Master Landlord) (The managing member is Foundation.)
4. Makers Square Master Tenant, LLC (Master Tenant) (The managing member is Foundation.)
5. Makers Square Manager, LLC (The managing member is Foundation.)

RECITALS:

- A. By this Memorandum of Agreement (MOA or Memorandum), the parties desire to set forth, confirm, and acknowledge certain understandings, principles and agreements in regard to their collaboration on the Makers Square Project (“Project”) at Fort Worden.
- B. FWPDA is a public development authority organized under the laws of the State of Washington, and has leased portions of Fort Worden State Park pursuant to a Master Lease with the State.
- C. Foundation is a private nonprofit corporation that was formed as a supporting organization under federal tax laws to support the mission of FWPDA. (Since the Project, Foundation has expanded its mission to include support for other entities with a presence at Fort Worden.)
- D. FWPDA undertook planning for the Makers Square Project to rehabilitate certain buildings at Fort Worden, retained architects, developed designs and projections for uses, and developed a project budget, and following FWPDA Board approval, undertook the project.
- E. In developing a project budget, FWPDA identified funding sources that included grants and federal historic tax credits (HTCs). Both grant funding that was available to Foundation and HTCs required participation and collaboration with the Foundation.

Specifically, the process for securing HTCs required new entities (the LLCs) to be created that would be controlled by a private entity, in this case, Foundation. These entities were Makers Square Master Landlord, LLC and Makers Square Master Tenant, LLC, and Makers Square Manager, LLC. FWPDA, working with Foundation, initiated formation of the LLCs.

- F. The HTC structure (again, for the purpose of placing control over the property subject to HTCs in a private entity) required leases for Project buildings from FWPDA to Master Landlord, and from Master Landlord to Master Tenant.
- G. FWPDA and Foundation also agreed that there would be a lease from Master Tenant to Foundation to allow Foundation to manage, on a temporary basis (until termination of the HTC structure) the Project area and facilities. (Separately, the parties agreed that Master Tenant would lease a portion of the Project to KPTZ.)
- H. The HTC structure allowed private investment to be secured for the Project (in return for the HTC investor receiving tax credits). The HTC process resulted in significant funding for the Project.
- I. On the investor's realization of the tax credits, the parties understood and agreed that the LLCs would terminate, and the leases created between FWPDA and Master Landlord, and between Master Landlord and Master Tenant, and between Master Tenant and Foundation would terminate, so that FWPDA would return to its position as controlling entity of these Fort Worden assets leased to FWPDA under the Master Lease (subject to leases entered in by Foundation, and subject to the lease Master Tenant entered into with KPTZ). The HTC structure will likely terminate (once the tax credits are realized) by 2026. The parties agree to cooperate in terminating the HTC structure once the investor notifies the parties it has realized HTC tax credits.
- J. In identifying a budget for the Project, and in the course of developing the Project, FWPDA and Foundation understood and agreed as part of their common interests and enterprise and Foundation supporting role to FWPDA, that FWPDA anticipated receiving, and relied on receiving, receipts from tax credits and grants obtained by Foundation or LLCs, and income from leases or use agreements that would be entered into by Master Tenant or Foundation for facilities developed by the Project, in order to cover and secure debts and obligations incurred by FWPDA. Tax credits that would flow

to Master Tenant would in turn be transferred to FWPDA, and lease receipts (for example, from the KPTZ lease), would likewise be credited to FWPDA, to allow FWPDA to cover debt and expenses.

- K. This Memorandum sets forth the understanding and agreement that all receipts from the Project realized by Master Tenant would flow though to FWPDA (except as the parties agree otherwise in the Memorandum) to secure debts and obligations incurred by FWPDA in the course of the Project and other expenses.
- L. Without these understandings and agreements set forth in this Memorandum, FWPDA would be left with debt and obligations associated with development of the Makers Square Project, while Master Tenant (managed by Foundation) would receive income from Makers Square free of those debts and obligations. But for the understandings and agreements in this Memorandum, FWPDA would not have incurred debts and obligations related to the Makers Square Project and/or incurred other expenses.
- M. In recognition of Foundation's efforts and administration of leases and other activates, the parties agree that from Project lease income Master Tenant receives (not including from KPTZ), Foundation shall be entitled to retain 1.5%.
- N. These Recitals are a material part of this Memorandum, and are intended as effective and binding between the parties

AGREEMENT

Now therefore, based on mutual consideration and benefits, and in recognition of Foundation's supporting role and mission to support FWPDA, the parties agree to adhere and be bound by the understandings and agreements set forth in this Memorandum of Agreement.

SIGNATURES

FORT WORDEN LIFELONG LEARNING CENTER PUBLIC DEVELOPMENT
AUTHORITY

By: _____ Date: _____
David Timmons, Executive Director

FORT WORDEN FOUNDATION,
a Washington nonprofit corporation

By: _____ Date: _____
Herb Cook, President

MAKERS SQUARE MASTER LANDLORD, LLC,
a Washington Limited Liability Company, managing member is
Foundation

By: _____ Date: _____
Herb Cook, President

MAKERS SQUARE MASTER TENANT, LLC,
a Washington Limited Liability Company, managing member is
Foundation

By: _____ Date: _____
Herb Cook, President

MAKERS SQUARE MANAGER, LLC,
a Washington Limited Liability Company, managing member is
Foundation

By: _____ Date: _____
Herb Cook, President